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FEDERAL ELECTION COMMISSION
JUL 9 2015

BEFORE THE FEDERAL ELECTION COMMISSION

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In the Matter of)
)
MUR 6809)
Kultala for Congress)
and Carol Marinovich as treasurer)
Kultala for State Senate)
)

DISMISSAL AND
CASE CLOSURE UNDER
THE ENFORCEMENT
PRIORITY SYSTEM

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FEDERAL ELECTION
COMMISSION

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include without limitation an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances. The Office of General Counsel has scored MUR 6809 as a low-rated matter and has determined that it should not be referred to the Alternative Dispute Resolution Office.¹

For the reasons set forth below, the Office of General Counsel recommends that the Commission dismiss the allegations that Respondents Kultala for Congress and Carol

¹ The EPS rating information is as follows:
Filed: May 15, 2014.

Complaint Filed: April 23, 2014. Response

1 Marinovich in her official capacity as treasurer (collectively the "Federal Committee"),² and
2 Kultala for State Senate (the "State Committee") violated 52 U.S.C. § 30125(e)(1) and
3 11 C.F.R. § 110.3(d).

4 Complainant Clayton L. Barker ("Barker") alleges that on February 17, 2014, the
5 Federal Committee accepted a \$1,000 contribution from the State Committee. Compl. at 1.³
6 According to the Complainant, the State Committee had received contributions from
7 corporations and labor unions, as permitted by Kansas state law. *Id.* As a result, the
8 Complainant asserts that Respondents violated 11 C.F.R. § 114.2(b)(1), which prohibits
9 corporations and labor unions from making contributions in connection with a Federal
10 election. *Id.*

11 The Response appends a letter addressed to Kultala from Tom Keating ("Keating"),
12 the Federal Committee's Custodian of Records. Resp. at 1-3. Keating explains that, before
13 the State Committee made the contribution to the Federal Committee, he sought guidance
14 from the Kansas Ethics Commission, which reportedly informed Keating that "it was a federal
15 matter," *id.* at 2. According to Keating, he then contacted the Commission's Information
16 Division, which advised that contributions from "unregistered organizations" are permissible
17 if the organization can show, using a reasonable accounting method, that it has sufficient
18 federal funds to make the contributions. *Id.* He maintains that the State Committee had
19 accepted well over \$1,000 in federally permissible funds and, therefore, its \$1,000

² The Federal Committee was candidate Kelly Kultala's campaign committee during her unsuccessful 2014 race for Congress from Kansas's Third Congressional District.

³ See also *id.*, Attach. 1 at 1 (Federal Committee's 2014 April Quarterly Report at 36, disclosing a \$1,000 contribution from the State Committee on February 17, 2014).

1 contribution to the Federal Committee complied with federal law. *Id.* Keating asserts that
2 such contributions are "routine" in other states and, as an example, observes that in 2010,
3 Yoder for Congress⁴ accepted a \$2,400 contribution from "Yates 2010," a committee not
4 registered with the Commission.⁵ *Id.* at 2-3.⁶

5 Federal candidates and entities directly or indirectly established, financed, maintained,
6 or controlled by or acting on behalf of those candidates are prohibited from transferring,
7 soliciting, receiving, directing, or spending funds in connection with an election for federal
8 office unless the funds are subject to the limits, prohibitions, and reporting requirements of
9 the Act. 52 U.S.C. § 30125(e)(1).⁷ Moreover, 11 C.F.R. § 110.3(d) prohibits the transfer of
10 funds or assets from a candidate's nonfederal campaign committee to his or her federal
11 campaign committee.

12 It appears that the State Committee's \$1,000 contribution to the Federal Committee
13 violated 52 U.S.C. § 30125(e)(1) and 11 C.F.R. § 110.3(d). However, the available

⁴ Yoder for Congress is the campaign committee of Congressman Kevin Yoder, who defeated Kultala in the 2014 general election.

⁵ However, Keating acknowledges that Kan. Stat. Ann. ("K.S.A.") 25-4153(f), a state law of which he was not previously aware, prohibits contributions from state committees to federal committees. *Id.*, see also *id.*, Attach. 1 (copy of letter from Keating to Kansas Ethics Commission acknowledging violation) and Attach. 2 (copy of refund check for \$1,000 from Federal Committee to State Committee dated April 20, 2014). See also Federal Committee's 2014 July Quarterly Report at 73 (disclosing that the Federal Committee refunded the \$1,000 contribution to the State Committee on April 20, 2014).

⁶ See also Request for Additional Information from the Reports Analysis Division dated June 29, 2010, at 3, 6 (advising that, pursuant to 11 C.F.R. § 102.5, an organization not registered with the Commission, which makes contributions to federal committees must either establish a separate account that contains only funds that comply with the Act's limitations and prohibitions, or demonstrate through a reasonable accounting method that the organization has received sufficient FEC-compliant funds to make the contribution, and identifying Yates 2010 as a committee not registered with the Commission).

⁷ It is noted that Kansas permits state candidates to accept contributions from corporations and unions, see K.S.A. § 25-4143(j).

1 information indicates that the violation was inadvertent.⁸ Moreover, once Respondents were
2 made aware of the error, they took prompt remedial action by having the Federal Committee
3 refund the contribution to the State Committee before the Complaint in this matter was filed.

4 Accordingly, under the facts presented in this matter, further Enforcement resources are
5 not warranted and, therefore, the Office of General Counsel recommends that the Commission
6 exercise its prosecutorial discretion and dismiss the allegations that Kultala for Congress and
7 Carol Marinovich in her official capacity as treasurer, and Kultala for State Senate violated
8 52 U.S.C. § 30125(e)(1) and 11 C.F.R. § 110.3(d). *See Heckler v. Chaney*, 470 U.S. 821
9 (1985). In addition, this Office recommends that the Commission approve the attached
10 Factual and Legal Analysis and the appropriate letters and close the file.

11 **RECOMMENDATIONS**

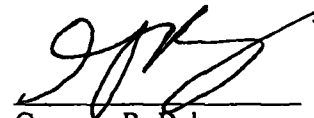
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13 1. Dismiss the allegations that Kultala for Congress and Carol Marinovich in her official
14 capacity as treasurer, and Kultala for State Senate violated 52 U.S.C. § 30125(e)(1)
15 and 11 C.F.R. § 110.3(d);
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17 2. Approve the attached Factual and Legal Analysis and the appropriate letters; and
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19 3. Close the file.

20 General Counsel

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7/8/15

BY:


Gregory R. Baker
Deputy General Counsel

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⁸ The Response may rely on the mistaken belief that 11 C.F.R. § 102.5(b), which pertains to organizations that finance activity in connection with both Federal and nonfederal elections, other than through transfers and joint fundraisers, is applicable to the facts at issue.

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Ruth Heilizer
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Attorney